DRN-5180709

The complaint

Mrs M has complained, with the help of a professional third party, about the transfer of her Aviva Life & Pensions UK Limited ('Aviva') personal pension to a small self-administered scheme ('SSAS') in June 2014. Mrs M's SSAS was subsequently used to invest in a car parking scheme. That investment now appears to have little value.

Mrs M says Aviva failed in its responsibilities when dealing with the transfer request. She says that it should have done more to warn her of the potential dangers of transferring, and undertaken greater due diligence on the transfer, in line with the guidance she says was required of transferring schemes at the time. Mrs M says she wouldn't have transferred, and therefore wouldn't have put her pension savings at risk, if Aviva had acted as it should have.

Mrs M's husband, Mr M, also transferred a pension he held with Aviva to the SSAS at the same time. The transfer of Mr M's Aviva pension is the subject of a separate complaint with the Financial Ombudsman Service. Mr and Mrs M also held pensions individually with another business which I'll call 'Firm F'. And they both also applied to transfer their pension benefits from Firm F to the SSAS at around the same time as the transfers from Aviva. Some of the circumstances of Mrs M's application to transfer her Firm F pension and both of Mr M's applications to transfer his pensions are relevant to this complaint. So, I have referred to them below.

What happened

On 14 February 2014 Mrs M signed a letter of authority to allow a business called CIP to obtain transfer values and documentation for her Aviva pension. CIP faxed a copy of this form to Aviva on 18 February 2014. CIP does not appear to have been authorised or regulated by the Financial Conduct Authority ('FCA').

On 10 March 2014, Aviva wrote to CIP acknowledging receipt of a letter of authority and said it enclosed a valuation of Mrs M's pension policy. The letter also thanked CIP for requesting transfer discharge forms but explained that transfers could be requested through the Origo Options system, removing the need for forms. Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

In April 2014, a company was incorporated with Mr and Mrs M as directors. I'll refer to this company as H Ltd. A SSAS was then set up and registered with HMRC on 9 May 2014. H Ltd was the SSAS's principal employer and Rowanmoor Group Plc ('Rowanmoor') was the administrator. The interim trust deed, dated 8 May 2014, said Rowanmoor Trustees Limited was appointed as the independent trustee. Minutes of the first trustee meeting on the same day indicate that Rowanmoor was also appointed as scheme and actuarial adviser, Rowanmoor Trustees Limited was appointed to act as the sole signatory to the trustee bank account and Return on Capital Group Limited ('ROCG') as the Investment and scheme adviser.

Aviva then received a request via Origo to transfer Mrs M's pension benefits. The copy of the Origo entry we've been provided gave the transfer creation date as 27 May 2014. It noted

the expected completion date was in June 2014 and said the reason for the delay was *"additional checks required"*. The request listed Rowanmoor as the receiving provider and ROCG as the adviser firm.

On 19 June 2014 Aviva wrote to Mrs M to say her transfer value, which was £42,102.08, had been sent to Rowanmoor. Mrs M was 43 years old at the time. Mr M's transfer of his Aviva pension completed on the same day.

Following the transfer Rowanmoor wrote to Mrs M saying it understood she wished to go ahead with investment in the car parking scheme. It said that a company called The Hetherington Partnership ('THP') would send her legal documents for signature. I understand that was a law firm introduced by Group First, which offered the investment in the car parking scheme. THP provided Mrs M a report on the investment which explained that it involved purchasing a leasehold on two parking spaces. The purchase price was £40,000. Park First, part of Group First, agreed to rent the space from Mrs M and would pay the first two years payment upfront, and THP set out the rent payable for the rest of the agreement. With the payment of rent upfront factored in, along with fees, the amount that needed to be paid from the pension funds to complete was just under £34,000, which was sent to THP in October 2014.

I understand around the same time as the Aviva transfer was ongoing, an application was made to also transfer Mrs M's pension benefits held with Firm F to the SSAS. Firm F ultimately declined the request. It wrote to Rowanmoor in April 2015 in respect of Mrs M's transfer request explaining why. This letter appears to have been in response to an appeal by Rowanmoor. I understand Firm F also declined a request by Mr M to transfer his pension benefits to the SSAS as well.

The bank statements for the SSAS indicate rent was initially received in line with the agreement THP provided. But it appears this ceased in 2019. And I understand the investment has run into trouble and Mrs M – like many investors – is struggling to realise any value from it.

Mrs M complained to Aviva in 2021. She said Aviva had information that the transfer was to a newly set up SSAS and that unregulated parties had been involved. But she didn't think Aviva had done sufficient further due diligence given it was aware of that information.

Aviva didn't uphold the complaint. It said the transfer request had come through Origo, not just any company could use that system and providers had to sign up to a strict terms of business. One condition was the new provider needed a completed application form authorising the ceding scheme to settle the policy and transfer funds to the receiving scheme. As a result, Aviva said transfer requests received through Origo would not be viewed as suspicious or illegitimate and Aviva would not contact consumers to check that they wanted to proceed.

The complaint was referred to the Financial Ombudsman Service. I issued a provisional decision in November 2024 explaining that I didn't intend to uphold Mrs M's complaint. Below are extracts from my provisional findings, explaining why, which form part of my final decision.

The relevant rules and guidance

Personal pension providers are regulated by the FCA. Prior to that they were regulated by the FCA's predecessor, the Financial Services Authority ('FSA'). As such Aviva was subject to the FSA/FCA Handbook, and under that to the Principles for Businesses ('PRIN') and to the Conduct of Business Sourcebook ('COBS'). There have never been any specific

FSA/FCA rules governing pension transfer requests, but the following have particular relevance here:

- *Principle 2 – A firm must conduct its business with due skill, care and diligence;*

- *Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly;*

- *Principle 7 – A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading; and*

- *COBS 2.1.1R (the client's best interests rule), which states that a firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

The Pensions Schemes Act 1993 gives a member of a personal pension scheme the right to transfer the cash equivalent value of their accrued benefits to another personal or occupational pension scheme if certain conditions are satisfied (and they may also have a right to transfer under the terms of the contract). This right came to be exploited, with people encouraged to transfer to fraudulent schemes in the expectation of receiving payments from their pension that they weren't entitled to – for instance, because they were below minimum retirement age. At various points, regulators issued bulletins warning of the dangers of taking such action. But it was only from 14 February 2013 that transferring schemes had guidance to follow that was aimed at tackling pension liberation – the "Scorpion" guidance.

The Scorpion guidance was launched by TPR. It was described as a cross-government initiative by Action Fraud, The City of London Police, HMRC, the Pensions Advisory Service ('TPAS'), TPR, the Serious Fraud Office ('SFO'), and the FSA/FCA, all of which endorsed the guidance, allowing their names and logos to appear in Scorpion materials. The guidance comprised the following:

- *An insert to be included in transfer packs (the 'Scorpion insert'). The insert warns readers about the dangers of agreeing to cash in a pension early and identifies a number of warning signs to look out for.*

- *A longer leaflet issued by TPAS which gives more information, including example scenarios, about pension liberation. Guidance provided by TPR on its website at the time said this longer leaflet was intended to be sent to members who had queries about pension liberation fraud.*

- *An 'action pack' for scheme administrators that highlighted the warning signs present in a number of transfer examples. It suggested transferring schemes should "look out for" various warning signs of liberation. If any of the warning signs applied, the action pack provided a check list that schemes could use to help find out more about the receiving scheme and how the member came to make the transfer request. Where transferring schemes still had concerns, they were encouraged to write to members to warn them of the potential tax consequences of their actions; to consider delaying the transfer; to seek legal advice; and to direct the member to TPAS, TPR or Action Fraud.*

TPR issued the guidance under the powers at s.12 of the Pension Act 2004. Thus, for the bodies regulated by TPR, the status of the guidance was that it provided them with information, education and/or assistance, as opposed to creating any new binding rule or legal duty. Correspondingly, the communications about the launch of the guidance were predominantly expressed in terms that made its non-obligatory status clear. So, the tenor of the guidance is essentially a set of prompts and suggestions, not requirements.

The FSA's endorsement of the Scorpion guidance was relatively informal: it didn't take the form of Handbook Guidance, because it was not issued under s.139A of the Financial Services and Markets Act (FSMA), which enabled the FSA to issue guidance provided it underwent a consultation process first. Nor did it constitute "confirmed industry guidance", as can be seen by consulting the list of all such FSA/FCA guidance on its website.

I take from the above that the contents of the Scorpion guidance were essentially informational and advisory in nature and that deviating from it doesn't necessarily mean a firm has broken the Principles or COBS rules. Firms were able to take a proportionate approach to transfer requests, balancing consumer protection with the need to also execute a transfer promptly and in line with a member's statutory rights.

That said, the launch of the Scorpion guidance was an important moment in so far as it provided, for the first time, guidance for personal pension providers dealing with transfer requests – guidance that prompted providers to take a more active role in assessing those requests. The guidance was launched in response to widespread abuses that were causing pension scheme members to suffer significant losses. And the guidance's specific purpose was to inform and help ceding firms when they dealt with transfer requests in order to prevent these abuses and save their customers from falling victim to them.

In those circumstances, I consider firms which received pension transfer requests needed to pay regard to the contents of the Scorpion guidance as a matter of good industry practice. It means February 2013 marks an inflection point in terms of what was expected of personal pension providers dealing with transfer requests as a matter of fulfilling their duties under the regulator's Principles and COBS 2.1.1R.

<u>What did personal pension providers need to do?</u>

For the reasons given above, I don't think personal pension providers necessarily had to follow all aspects of the Scorpion guidance in every transfer request. However, I do think they should have paid heed to the information it contained. And where the recommendations in the guidance applied, absent a good reason to the contrary, it would normally have been reasonable, and in my view good industry practice, for pension providers at least to follow the substance of those recommendations. With that in mind, I take the view that personal pension providers dealing with transfer requests needed to heed the following:

1. *As a first step, a ceding scheme needed to check whether the receiving scheme was validly registered.*

2. *When TPR launched the Scorpion guidance in February 2013, its press release said the Scorpion insert should be provided in the information sent to members requesting a transfer. It said on its website that it wanted the inclusion of the Scorpion insert in transfer packs to "become best practice". The Scorpion insert provided an important safeguard for transferring members, allowing them to consider for themselves the liberation threat they were facing. Sending it to customers asking to transfer their pensions was also a simple and inexpensive step for pension firms to take and one that wouldn't have got in the way of efficiently dealing with transfer requests. So, all things considered, I think the Scorpion insert should have been sent as a matter of good industry practice with transfer packs and direct to the transferring member when the request for the transfer pack had come from a different party.*

3. *I also think it would be fair and reasonable for personal pension providers – operating with the regulator's Principles and COBS 2.1.1R in mind – to ensure the warnings contained in the Scorpion insert were provided in some form to a member before a transfer even if the transfer process didn't involve the sending of transfer packs.*

4. *The Scorpion guidance asked firms to look out for the tell-tale signs of pension liberation scams and undertake further due diligence and take appropriate action where it was apparent their client might be at risk. The action pack points to the warning signs transferring schemes should have been looking out for and provides a framework for any due diligence and follow-up actions. Therefore, whilst using the action pack wasn't an inflexible requirement, it did represent a reasonable benchmark for the level of care expected of transferring schemes and identified specific steps that would be appropriate for them to take, if the circumstances demanded.*

5. *The considerations of regulated firms didn't start and end with the Scorpion guidance. If a personal pension provider had good reason to think the transferring member was being scammed – even if the suspected scam didn't involve anything specifically referred to in the Scorpion guidance – then its general duties to its customer as an authorised financial services provider would come into play and it would have needed to act. Ignoring clear signs of a scam, if they came to a firm's attention, or should have done so, would almost certainly breach the regulator's principles and COBS 2.1.1R.*

<u>The circumstances surrounding the transfer – what does the evidence suggest happened?</u>

Mr and Mrs M have said they were at a function and were discussing pensions with friends. They met someone during that conversation (who I'll refer to as 'SM') who told them about an investment opportunity. They agreed to speak to SM the following week. Mrs M says they had a phone call with SM in which she was told she'd receive a guaranteed amount from the investment each year and that the investment was a "no brainer". And she says SM recommended she and her husband transfer their pensions from Aviva to a SSAS and invest in the airport parking investment.

I think Mrs M's explanation is plausible and I think it was the conversation with SM that prompted the request to transfer from Aviva.

It isn't clear who SM worked for or represented when they spoke to Mrs M. She says she wasn't informed that SM wasn't authorised to give advice.

CIP was the business that first contacted Aviva on Mrs M's behalf. And it appears in fact that this business and Rowanmoor were the only two businesses that Aviva had any contact with. I can't see that ROCG or THP had any contact with Aviva. ROCG was only mentioned from the point that the SSAS was established and in the Origo request. And THP doesn't appear to have been involved until after the transfer completed.

I've seen nothing to suggest SM was connected to Rowanmoor – as otherwise I wouldn't have expected CIP to request information from Aviva as Rowanmoor could have contacted it directly. I don't think SM was working for THP, as otherwise I might have expected to see this business mentioned sooner in the process or at least some reference being made, when Rowanmoor introduced this business to Mrs M, of her already being aware of them due to her contact with SM. And I think it is unlikely that SM was connected to ROCG. It is true ROCG, which wasn't regulated by the FCA, was named on the Origo report as the adviser. But the minutes of the SSAS trustee meeting indicate that ROCG's involvement was potentially in respect of advice to the trustees on the investments the SSAS could make. And again, if SM worked for ROCG I'd have expected ROCG to have been the party that asked Aviva for transfer documents.

Mr and Mrs M don't recall if SM worked for CIP. And this isn't clear. On balance though I think its likely that SM did either work for CIP or acted as an introducer to CIP – as this

would explain Mrs M signing a letter of authority for CIP. I can't see that CIP was regulated by the FCA. And I've seen nothing to confirm that SM was either – in whichever capacity they were operating.

Mrs M hasn't said she was offered a cash incentive to transfer or told she could access her pension before age 55 – and the pension statements don't indicate she accessed any funds. Rather Mrs M says guaranteed investment returns were promoted to her and she was advised to transfer because of these.

What Mrs M has said about what she was told is, in my view, consistent with her being advised – the improved returns of the alternative pension and investment being in her interests, so therefore better than what she would receive from Aviva. I haven't seen anything that leads me to think Mrs M had any great experience with regard to pensions and investments. Nor have I seen anything about her circumstances or what she's said that leads me to think she'd likely have embarked on such a complicated arrangement on her own – setting up a new company, opening a SSAS, transferring her existing pension and investing in a single, unregulated investment. And I've seen no evidence to suggest that Mrs M was considering transferring her pension prior to speaking to SM. So, I think it's likely she was advised to transfer, and it was this advice that prompted her to do so.

I'd also briefly note that Park First entered administration in 2019 and the FCA commenced legal proceedings against it with the aim of recovering funds for investors. As I understand it what this means for Mrs M is still unknown. So, the investment does not appear to be providing any returns anymore and it appears to be illiquid.

<u>What did Aviva do and was it enough?</u>

The Scorpion insert:

For the reasons given above, my view is that personal pension providers should, as a matter of course, have sent transferring members the Scorpion insert or given them substantially the same information.

Mrs M doesn't recall seeing or receiving the Scorpion leaflet. And the copies of correspondence I've seen between her, and Aviva don't indicate that one was sent. The only outbound letter that I've been provided a copy of from Aviva was the one it sent to CIP on 10 March 2014. I haven't seen any correspondence that was sent to Mrs M.

I note though that, in respect of Mr M's transfer from Aviva, when it wrote to CIP to acknowledge the transfer request, Aviva also wrote directly to Mr M. And it included the Scorpion leaflet with that letter. Although I haven't been provided a copy of a similar letter to Mrs M, on balance of probabilities I think it is likely that a similar letter was sent to her, as part of Aviva's process.

I also note that Firm F sent Mr M a questionnaire to complete as part of his application to transfer. Part of the declaration included an acknowledgement that he'd seen and read the Scorpion leaflet, indicating Firm F included a copy. And Mr M signed that declaration. Mrs M had also applied to transfer a pension held with Firm F to the SSAS. Again, I think on balance it is likely to have followed the same process. So, although I don't have a copy, I think it is likely that it sent a similar questionnaire to her, and that it also provided her with the Scorpion insert.

On balance therefore, I think it is likely Mrs M was sent a copy of the Scorpion leaflet. And, in any event, as I've said, I'm satisfied this was sent to Mr M. Given the transfers were all to one SSAS and seem intrinsically linked, I think Mrs M would've also had access to the

Scorpion information that was sent to Mr M.

Due diligence:

In light of the Scorpion guidance, I think firms ought to have been on the look-out for the tell-tale signs of pension liberation and needed to undertake further due diligence and take appropriate action if it was apparent their customer might be at risk.

Aviva has said that the transfer was processed through Origo, and Rowanmoor would have had to be approved by Origo to use its system. So, it has suggested in its final response to Mrs M that this provided it reassurance. However, Aviva hasn't provided any details on what exactly Origo did in this respect. I think that points to the problem with relying on due diligence conducted by a third party when Aviva doesn't appear to have really known what that due diligence involved. Given the importance of what the due diligence in question was aimed at preventing – pension liberation, the end result of which can often be the loss of entire pension funds – and the clear steps that were expected of ceding schemes to prevent this happening, not to mention the duties of ceding schemes under PRIN and COBS 2.1.1R, I don't think relying on Origo's vetting process would have been good enough here.

I note that at the time of the transfer Rowanmoor was a long established SSAS provider and had some repute in the industry. Rowanmoor Trustees Limited also had legal and fiduciary duties as a professional trustee. There's an argument, therefore, that Aviva could have taken comfort from this. I disagree. The Scorpion guidance gave ceding schemes an important role to play in protecting customers wanting to transfer a pension. It would defeat the purpose of the Scorpion guidance for a ceding scheme to have delegated that role to a different business – especially one that had a vested interest in the transfer proceeding. An important aspect in this is the fact that there is little regulatory oversight of small SSASs; they don't have to be registered with TPR. In the absence of that oversight, Aviva would've effectively been assuming that Rowanmoor would want to maintain its standing in the industry and the trustee subsidiary would comply with its legal and fiduciary duties. In the context of guarding against pension scams – and in an environment where providers and trustees clearly didn't always act as they should have done – I don't consider this to have been a prudent assumption.

The fact that a different part of Rowanmoor's business was regulated by the FCA doesn't change my thinking on this. The key point is that Rowanmoor Group Plc and Rowanmoor Trustees Limited (both of which were involved in the operation of the SSAS) weren't FCA-regulated so I see no reason why they would have operated with FCA regulations and Principles in mind – or why their actions would have come under FCA scrutiny. As such, I'm not persuaded Aviva could, reasonably, have derived sufficient comfort about the Rowanmoor SSAS as a destination for Mrs M's transfer so as to not carry out its own due diligence.

I note though that the Origo summary points to the transfer having been delayed due to additional checks being required. And in the case of Mr M's transfer, I've seen an internal email chain where the transfer was referred to Aviva's internal transfer team. The email explained the reason as being "I know we are currently not processing transfer to this scheme, please advise". There was a reply, a couple of days later, saying the transfer could now proceed. Again, given the similar parties involved in Mrs M's transfer, I think it is likely that Aviva carried out the same referral in respect of her transfer and that these were the additional checks the Origo report mentioned.

I haven't been provided evidence of what further checks Aviva did, in respect of either Mr M or Mrs M's transfer, before its internal transfer team said they could go ahead. But in Mr M's case, Aviva said this would have consisted of checking if the scheme was registered with

HMRC and if Aviva had any other existing concerns.

Checking that the SSAS was correctly registered with HMRC would've alerted Aviva to it having only been registered in May 2014. And a receiving scheme being newly registered was something that the Scorpion action pack for businesses said was a potential warning sign of liberation activity. Aviva has argued that it was not uncommon for SSAS's to be newly registered and that this wasn't necessarily cause for concern. But the Scorpion action pack specifically identifies this as a warning sign to be wary of.

The Origo request Aviva received also named, ROCG, as the adviser. Aviva had also received written authority and the request for transfer information from CIP and in the internal email chain in Mr M's case referred to CIP as the adviser. Neither CIP nor ROCG appear to have been FCA authorised. While being advised by an unregulated adviser wasn't one of the highlighted warning signs in the Scorpion action pack for businesses, it was in the longer check list as something to ask about and potentially be a reason for concern. Which I think it would've been reasonable for Aviva to consider, given the scheme was newly registered.

So, although Aviva did clearly do something here – as the transfer appears to have been paused pending approval - I don't know what this consisted of. And, given the information that should have been obtained by Aviva, I think it should have followed up to find out if other signs of liberation were present. I think the most reasonable way of going about that would have been to turn to the check list in the action pack to structure its due diligence into the transfer.

The check list provided a series of questions to help transferring schemes assess the potential threat by finding out more about the receiving scheme and how the consumer came to make the transfer request. Some items on the check list could have been addressed by checking online resources such as Companies House and HMRC. Others would have required contacting the consumer. The check list is divided into three parts (which I've numbered for ease of reading and not because I think the check list was designed to be followed in a particular order):

1. *The nature/status of the receiving scheme*

Sample questions: Is the receiving scheme newly registered with HMRC, is it sponsored by a newly registered or dormant employer, an employer that doesn't employ the transferring member or is geographically distant from them, or is the receiving scheme connected to an unregulated investment company?

2. *Description/promotion of the scheme*

Sample questions: Do descriptions, promotional materials or adverts of the receiving scheme include the words 'loan', 'savings advance', 'cash incentive', 'bonus', 'loophole' or 'preference shares' or allude to overseas investments or unusual, creative or new investment techniques?

3. *The scheme member*

Sample questions: Has the transferring member been advised by an 'introducer', been advised by a non-regulated adviser or taken no advice? Has the member decided to transfer after receiving cold calls, unsolicited emails or text messages about their pension? Have they applied pressure to transfer as quickly as possible or been told they can access their pension before age 55?

Opposite each question, or group of questions, the check list identified actions that should help the transferring scheme establish the facts.

I don't think it would always have been necessary to follow the check list in its entirety. And I don't think an answer to any one single question on the check list would usually be conclusive in itself. A transferring scheme would therefore typically need to conduct investigations across several parts of the check list to establish whether liberation was a realistic threat.

Had it done this, I think it's likely that Aviva would have built up the following information about the transfer – which were signs of potential pension liberation under the Scorpion guidance:

- *Mrs M was transferring to a recently established scheme with a newly incorporated sponsoring employer.*

- *Although Mrs M was a director of the sponsoring employer, it wasn't genuinely trading or providing her with an income. It was, essentially, a means to establish a pension arrangement, which the Scorpion guidance indicated could be a sign of liberation activity.*

- *Mrs M's intended investment was unregulated.*

Against this though, Aviva would also have known, and established, the following which would have indicated liberation wasn't a concern:

- *Mrs M's reason for transferring was to access a particular investment and improve returns. She wasn't expecting a cash payment following the transfer.*

- *Mrs M hadn't been told she could access her funds before age 55.*

It is important to remember that at the time businesses were being asked to help guard against the risk of pension liberation. Investigations into the receiving scheme, sponsoring employer and intended investments were a means to an end: to establish the risk of liberation. And here, while Aviva should have found some liberation warning signs, I think it would have ultimately concluded that the liberation threat was minimal given Mrs M's reasons for transferring. And I'm satisfied on balance it had already provided Mrs M the Scorpion leaflet, warning about the risks of liberation.

As I've said though, Mrs M signed a letter of authority for CIP, and it made the initial request for information from Aviva. And the Origo summary said ROCG was the adviser. Either of those businesses acting as Mr M's adviser, in respect of transferring benefits from a personal pension plan, would have been a breach of the general prohibition imposed by FSMA, which states no one can carry out regulated activities unless they're authorised or exempt. Anyone working in this field should have been aware that financial advisers need to be authorised to give regulated investment advice in the United Kingdom – indeed, the Scorpion insert itself makes this point. My view is that Aviva should have been concerned by CIP and ROCG's involvement – which it was aware of. And I think it ought to have informed Mrs M of these concerns.

What I have to decide is, whether I think that would have made a difference here.

As I've mentioned, I've seen some information in respect of Mr M's transfer requests that I haven't for Mrs M. And vice-versa. But on balance of probabilities, as their transfer requests were made at the same time, involving the same two ceding businesses, receiving scheme,

administrator and request platform, I think it is likely they followed the same process.

Firm F asked Mr M to complete a 'Supplemental transfer form'. And I think a copy was likely sent to Mrs M as well.

The first page of the form asked for some information relating to the receiving scheme, specifically the sponsoring employer. It asked for the name of the sponsoring employer, whether this business was trading, in what capacity the applicant worked for the business, whether they were being paid by it and whether ongoing contributions were being made by the employer to the scheme.

The second page was a 'pension liberation checklist for members'. This gave a brief explanation of what pension liberation was and referred members to TPR's leaflet about this. It asked the person completing the form to tick any statements from a list that applied to the transfer. These included if they'd been contacted by phone, text, email or online about making the transfer, if their adviser was not authorised by the FCA, if they'd been offered an incentive to transfer, if they'd been invited to join the pension scheme of a business they didn't work for, if they'd been offered a guaranteed or high return investment, if they'd been encouraged to proceed without speaking to a regulated adviser or if they'd been offered access to their pension before age 55 or to more than 25% tax free through a 'loophole'. And it said if the answer to any of these was yes, the person requesting the transfer should consider if their pension was at risk. The checklist concluded by saying

"Lastly, do you know

- *Where your money is being invested, who is managing the investment and what their credentials are?*
- *What will happen to your pension savings in the event the employer / trustee or scheme administrator commences winding up or cannot be contacted?*
- *What the charges are in relation to the transfer and the ongoing administration of the receiving scheme?"*

The final page of the form was a member declaration section asking the person filling the form to confirm they'd read the TPR leaflet entitled 'Predators Stalk Your Pension', they agreed that where the scheme administrator had any doubt about the transfer it reserved the right to decline the request and if the scheme administrator agreed to the transfer, the applicant accepted responsibility for this.

The questions in the form were a significant prompt to check the status of the person that had provided advice and to be wary if they weren't regulated. It also indicated that being promised guaranteed returns was also an indicator of being at risk.

I haven't seen a copy of the version of this form completed by Mrs M. Again, though I think it is likely one was sent to her. Her and Mr M's recollections and explanations of the events surrounding the transfer have been similar throughout the complaints – which I think is reasonable as they appear to have been advised at the same time and the transfers involved all of the same parties. So, I think it is likely she'd have answered these questions in the same way as Mr M.

When Mr M completed this form, he didn't tick to say that any of the risks applied. In respect of whether the adviser was regulated it appears that the prompt to check this was either not heeded or disregarded. The latter was likely either because of information held at the time, that we haven't been made aware of, which led Mr and Mrs M to think the adviser was

regulated or because they were aware they were not regulated but Mr and Mrs M wanted to go ahead with the transfer anyway, knowing the adviser wasn't regulated, as they'd been told they'd receive good returns and they trusted the adviser.

Again, I think Mrs M would have likely answered in the same way. And so, on balance, if Aviva had given further information about the need for advisers to be regulated, she'd have proceeded on the same basis – either thinking or knowing that SM or another party was regulated or knowing they were unregulated but wanting to go ahead anyway.

Likewise, Mr M didn't tick to say he'd been offered guaranteed returns – even though he said this was the motivation for transferring. Mrs M has said her motivation was the same. So, it seems likely that this would also have been disregarded by Mrs M, as Mr M appears to have done.

I have seen a letter from Firm F to Rowanmoor in April 2015 in respect of Mrs M's transfer request. This talked about it not agreeing to the transfer, despite what appears to have been an appeal by Rowanmoor on Mrs M's behalf. This suggests that even though Firm F had initially declined to proceed, Mrs M was motivated to still go ahead and had agreed to Rowanmoor pursuing this on her behalf – suggesting she knew that Firm F was reluctant. She might not have been aware why exactly. But she would've known there was some reason for it not proceeding. This doesn't seem to have prompted her to think again about the transfer from Firm F or what had been recommended. Nor did it deter her from making the investment that had been discussed – which seems to have taken place after Firm F initially indicated it had concerns.

Taking all of this into account, I don't think it would be reasonable to say a further warning from Aviva about Mrs M's adviser would have prompted her to reconsider her transfer. The contemporaneous evidence doesn't, in my view, support that argument.

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

Aviva didn't provide any further comments for me to consider.

Mrs M's representative said that they disagreed with my findings. In summary they said I'd placed too much weight on the actions of Firm F, when the complaint was about Aviva. They said it wasn't clear if the questionnaire I'd referred to, which I'd seen evidence was sent to Mr M and had concluded on balance was also sent to Mrs M, had been sent before the Aviva transfer had completed, or if Firm F had raised concerns at that stage. They also said it was unclear how much correspondence Firm F had directly with Mrs M and what warnings it had provided, or if the questionnaire was sent to Mrs M or Rowanmoor.

In contrast, they said I'd agreed that Aviva ought to have been aware of several warning signs within the transfer request, but it hadn't done sufficient due diligence or provided warnings to Mrs M beyond the Scorpion leaflet – which they said was unlikely to have resonated with her as she was not liberating her pension. And they did not agree with me that further warnings from Aviva were unlikely to have changed Mrs M's mind about the transfer.

They also provided information to show that 'SM' was an appointed representative of an FCA authorised business at the time of the transfer – although was not authorised to provide pension transfer advice. And finally they said, as Mrs M was not receiving earnings from H Ltd she wouldn't have had a statutory right to transfer, which was a further reason Aviva

should have stopped the transfer.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Mrs M's representatives are correct that this complaint is looking at the actions of Aviva. But my role isn't just to look at whether Aviva has done something wrong. I have to think about whether that has caused Mrs M to be in a position she otherwise wouldn't have been and incur a loss that is attributable to Aviva. To determine that, the wider circumstances are relevant, which include the prospective transfer from Firm F. So, I don't agree with Mrs M's representative that it is unfair for me to consider the communication and transfer request involving Firm F.

As I explained in my provisional findings, on balance, I'm satisfied that Aviva carried out due diligence here. The Origo information made it clear that further checks had been required by Aviva before it processed the transfer. And the internal emails I've seen, in respect of Mr M's transfer from Aviva, support that his transfer request was referred to a specific transfer team for authorisation. On balance, I think it is likely that the same checks and referral took place in respect of Mrs M's transfer – given the Origo reports for both say that additional checks were required. It was only after the department the transfer was referred to gave approval that the transfer was processed. So, I'm satisfied that Aviva did take some action.

Again though, it isn't clear how extensive that due diligence was. Aviva has said this would've involved checking that the receiving scheme was correctly registered and if there were any other concerns noted internally. But I don't think that necessarily went far enough, given the information that it had – in particular that its check of whether the scheme was registered with HMRC would've shown that it had only recently been set up. So, I think Aviva should have done some further due diligence around Mrs M's transfer.

But the Scorpion guidance wasn't prescriptive around how that due diligence ought to have been conducted. And I think it would have been entirely reasonable for Aviva to have done so in the same manner as Firm F – by which I mean asking any questions of Mrs M in writing. As I explained in my provisional findings, I've seen evidence that Firm F sent Mr M a questionnaire about the transfer. On balance, I think it is likely a questionnaire in the same format was also sent to Mrs M – as the transfers were to the same destination scheme and involved the same ceding provider. And I think the answers Mrs M gave to Firm F were likely to be the same as those given by Mr M – as the transfers were closely linked (to the same SSAS) and they'd taken advice at the same time.

Had Aviva asked similar questions, I see no reason to think Mrs M would've provided different answers to Aviva to those Mr M (and I think likely she) gave to Firm F. When completing that form, Mr M was asked to tick statements that applied to his transfer. And he left blank questions including;

- Had he been contacted by phone, text, email or online about making the transfer?

- Was his adviser not authorised by the FCA?
- Had he been offered an incentive to transfer?
- Had he been invited to join the pension scheme of a business he didn't work for?
- Had he been offered a guaranteed or high return investment?
- Had he been offered access to his pension before age 55 or to more than 25% tax free through a 'loophole'?

And I think Mrs M would have given the same answers.

Mrs M's representative has said it isn't clear when this questionnaire was sent to Mr and Mrs M or if it was in fact sent to them directly. But Mr M signed the version that was provided to him. So, I think it is reasonable to conclude that the answers given reflected his understanding of the transfer. On balance I think Mrs M would also have been required to sign the version of the questionnaire in respect of her transfer application. And so I think it was likely sent to her to review. And I don't think it matters when these questions were provided because ultimately what I think they reflect is how Mrs M would have answered similar questions from Aviva.

The Scorpion guidance at the time asked ceding schemes to be on the look out for pension liberation. And, based on what I think Aviva would have learned had it asked further questions about the transfer – that there were some potential warning signs the Scorpion guidance highlighted but Mrs M wasn't transferring in order to access her pension benefits before age 55 or due to being offered an incentive (something her representative has confirmed when saying the Scorpion warnings would not have resonated) – I still think it would've reasonably concluded that the threat of pension liberation was minimal.

Mrs M has provided additional information about 'SM', specifically that this was a firm recorded on the FCA register as Stephen Mccarry, which was an appointed representative of a business that was authorised by the FCA at the time of the transfer. But I think this indicates that, had Aviva asked if Mrs M's adviser was authorised by the FCA, in a similar way to what Firm F asked, that she would have said that they were. So, this was unlikely to have prompted Aviva to provide any additional warnings. And I think it also serves to further show that, even if Aviva had mentioned the need for an adviser to be FCA regulated, Mrs M would likely have concluded this warning was not relevant to her – as she was in contact with an adviser that was registered with the FCA.

Taking all of this into account, while I think Aviva potentially ought to have gathered further information prior to processing the transfer, I don't think this would've led it to conclude that pension liberation was a risk here. As I said in my provisional decision, I'm satisfied on balance of probabilities that Aviva likely provided the Scorpion warnings to Mrs M – in the same way it appears to have sent them to Mr M. So, I don't think it would have concluded it needed to provide her with further warnings. And even if it had done, based on the circumstances of her complaint, I don't think this would've resulted in her taking a different course of action.

Mrs M's representatives have said that they believe she did not have a statutory right to transfer as she was not receiving earnings from the sponsoring employer of the SSAS. Notwithstanding that Aviva was not required as a matter of course to check Mrs M's employment status, a court clarified (in 'Hughes v The Royal London Mutual Insurance Society Ltd [2016] EWHC 319 (Ch)') that earnings did not have to come from the sponsoring employer for a statutory right to exist. Rather the applicant just had to be earning – and Mrs

M has indicated she was at the time of the transfer.

So, while I know this will come as a disappointment to Mrs M, I don't think Aviva needs to take any action here.

My final decision

For the reasons given above, I don't uphold Mrs M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 16 January 2025.

Ben Stoker
Ombudsman